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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961.

No. 815

THE PALTIER CORPORATION,
Petitioner,

vs.

UNION ASBESTOS & RUBBER COMPANY,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

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Respondent respectfully urges the Court that there is no real ground and no necessity for the granting of certiorari in this case. The decision of the Court of Appeals for the Seventh Circuit entered January 4, 1962 resolves all legal questions raised by this case and is in conformity with other decisions of that Court and of other tribunals.

Petitioner's Motion for Summary Judgment in the District Court was based entirely upon its understanding of the law as expressed by the Court of Appeals for the Seventh Circuit in the case of *Crane Packing Company v. Spitfire Tool and Machine Company*, 276 Fed. (2d) 271; cert. den. 80 S. Ct. 1259. The District Court disagreed with Petitioner's position and denied the motion. The Court of

Appeals granted a Petition for Interlocutory Appeal and, after an *en banc* hearing, unanimously affirmed the District Court.

This means merely that the District Court and Court of Appeals have disagreed with Petitioner's interpretation of the *Spitfire* case and not that there is any question involved which requires resolution by this Court. In this holding the District Court and Court of Appeals are consistent with other decisions by the Court of Appeals prior and subsequent to its decision in the *Spitfire* case[1] and with the decisions of the Courts of Appeals of other circuits[2] and of the Patent Office.[3] The decision of the Court of Appeals for the Seventh Circuit in the present case constitutes merely another holding that a reissue patent is not in

1. The Court of Appeals for the Seventh Circuit in the earlier case of *Weller Manufacturing Company v. Wen Products, Inc.*, 231 Fed. (2) 795, sustained a reissue patent, the application for which was filed almost six years after the original patent was issued. In *England v. John Deere and Company*, 284 Fed. (2) 460, rehearing den., cert. den. 81 S. Ct. 904, decided later than the *Spitfire* case, the Court sustained a reissue patent even though it was clear from the Opinion that there had been public sale and use more than 15 months prior to filing of the application for reissue.

2. In *Rohm and Haas Co. v. Roberts Chemicals, Inc.*, 245 Fed. (2) 693, the Court of Appeals for the Fourth Circuit sustained a reissue patent based on an application filed nine years after the original patent was issued and despite the fact that there apparently had been public use in the interval.

In *Southern Saw Service v. Pittsburgh Steel Saw Corporation*, 239 Fed. (2) 339, rehearing den., the Court of Appeals for the Fifth Circuit sustained a reissue patent where it was conceded that the infringer had been publicly using the accused device a year and eight months before the reissue application was filed.

In *Mast Cold Refrigerator Co. v. Lau Johnson Co.*, 217 Fed. (2) 39, cert. den. 75 S. Ct. 141, the Court of Appeals for the Ninth Circuit refused to hold a reissue patent invalid as a matter of law even though the application for reissue was filed almost twelve years after issuance of the original patent.

3. In *Ex parte Strassburger*, 127 USPQ 417, the Patent Office Board of Appeals specifically held that the prior art by which reissue patent should be judged is the prior art as of the date of application for the original patent.

validated, as a matter of law, by prior use or publication subsequent to the date of the original application but more than one year before the filing of the application for reissue.

CONCLUSION

The questions presented by the Petition for Certiorari have been uniformly decided by the Courts of Appeals of a number of different circuits. There is no reason that this Court should be required to resolve every question of statutory interpretation, especially when the lower courts have reached uniform results as to the meaning of the statute.

It is therefore submitted that the Petition should be denied.

Respectfully submitted,

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